

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
GRANTED BY KING COUNTY TO
ROY S. JEFFRESS,

ROBERT V. ELLIOTT,

Appellant,

v.

KING COUNTY and
ROY S. JEFFRESS,

Respondents.

SHB No. 85-35

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the review of a substantial development permit for a roadway and underground utilities to serve property on the shorelines of Lake Sammamish in King County, came on for hearing on December 20, 1985, at the Board's offices in Lacey, Washington. Sitting as the Board were Wick Dufford (presiding), Lawrence Faulk, Gayle Rothrock, Nancy R. Burnett, and Rodney M. Kerslake.

Appellant Robert V. Elliott appeared and represented himself.

Respondent King County was represented by Phyllis MacLeod, Deputy Prosecuting Attorney. Respondent Roy S. Jeffress was represented by his attorney Richard U. Chapin.

Witnesses were sworn and testified. Exhibits were admitted and examined. Argument was heard. From the testimony and exhibits the Board makes these

FINDINGS OF FACT

I

Appellant Robert V. Elliott owns and resides in a single-family residence on property located on the western shore of Lake Sammamish in King County. Mr. Elliott's home sits back approximately 150 feet from the ordinary high water mark (OHWM). His two neighbors to the north and also residents to the south occupy homes which share roughly this same setback.

II

Respondent Roy S. Jeffress has sought and been issued a shoreline substantial development permit for a road and underground utilities leading into the third parcel to the north of Elliott's property along the lakeshore. In a separate proceeding Mr. Jeffress has applied for a short plat to subdivide the parcel into three lots. The most northerly of the three proposed lots would be located waterward of 150 feet from the OHWM. The road and utilities would serve this lot, approaching within 130 feet of the OHWM--at least 70 feet, therefore, falling within the 200-foot shoreline strip.

1 The platting application is still pending.

2 III

3 King County is a political subdivision with the responsibility for
4 administering the Shoreline Management Act within its area of
5 jurisdiction--an area which includes the site of the instant
6 controversy. The County has adopted a shoreline master program which
7 is incorporated into the state administrative code at WAC 173-19-250.
8 This program is codified in the King County Code in Title 25. We take
9 notice of its provisions.

10 Under the master program, the site in question is located within
11 an area designated "urban." The permit at issue, No. 016-85-SH, was
12 issued after evaluation of the master program use regulations for an
13 environment so designated. The permit authorizes nothing more than
14 the construction of a road and the undergrounding of utilities.

15 IV

16 On the property which Jeffress proposes to subdivide, there is
17 presently a residence which is located slightly closer to the lake
18 than those, like Elliott's, on adjacent properties to the south. In
19 addition at the water's edge there now exists an open-sided, roofed
20 structure (about the size of a small garage) which houses a barbecue.
21 From this building a pier extends into the lake. Tall deciduous trees
22 border the barbecue structure and the lot's edge screening to a degree
23 the development adjacent to the north.

24 V

25 The property adjacent to the north contains a sizable condominium

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1 which approaches within about 50 feet of the OHWM. The property which
2 is the subject of this case is, thus, the last in a line of lots
3 containing single-family residences set back a substantial distance
4 from the lake, before giving way to multi-family units sited much
5 closer to the water.

6 VI

7 The properties along the strip of lakeshore of concern are
8 generally flat topographically with extensive lawns and considerable
9 landscaping. The shoreline in this area is a feeding ground for a
10 large number of wild geese and ducks.

11 VII

12 Except for a brief period during construction, the roadway and
13 underground utilities authorized by the challenged substantial
14 development permit would present no visual intrusion into the
15 neighborhood other than the substitution of a strip of blacktop for
16 grass.

17 No adverse impacts on wildlife nesting or rearing, on unique or
18 fragile natural areas, or on any environmental values was shown to be
19 the likely result of the road and utilities project.

20 VIII

21 Mr. Elliott's fears are not directly related to the road and
22 utilities themselves but to the further development of the property
23 which he believes they herald. On the proposed parcel to which the
24 road would lead, he is concerned that a home will be built much closer
25 to the water than are the neighboring homes. He foresees a

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1 significant view blockage, disturbance of the ducks and geese and most
2 important a decline in property values.

3 However, on the record before us we can find only that these
4 worries are in the realm of speculation. No building permit for a
5 home has been sought. We have no proof of where a new home will be
6 built or that one will be built at all. We have no idea how a home,
7 the location and dimensions of which we can only guess, would affect
8 the already substantially obstructed northward view from properties to
9 the south, such as Elliott's. We have no basis for determining that a
10 negative impact on wildlife or on property values will inevitably
11 result from allowing this road and utility project.

12 IX .

13 Any Conclusion of Law which is deemed a Finding of Fact is hereby
14 adopted as such.

15 From these Findings of Fact we come to the following

16 CONCLUSIONS OF LAW

17 I

18 We review shoreline substantial developments for consistency with
19 the applicable master program and the policies of the chapter 90.58
20 RCW, the Shoreline Management Act (SMA). RCW 90.48.140(2).

21 II

22 Mr. Elliott's concerns could be construed as assertions of
23 prospective violations of SMA policies as set forth in RCW 90.58.020.
24 These policies, while generally protective of environmental values,
25 call for the fostering of "reasonable and appropriate uses."

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1 Mr. Elliott has not carried his burden to show that the proposed
2 development would be unreasonable, inappropriate or otherwise
3 violative of the policies of the statute. RCW 90.58.140(7).

4 III

5 The King County Shoreline Master Program clearly contemplates
6 utilization and development along shorelines designated "urban."
7 KCC 26.16.010.

8 Structures in "urban" areas are generally limited to 35 feet above
9 average grade level. KCC 25.16.030(b). The road and utilities
10 authorized in this case will not be above grade level at all.

11 Installation of utilities is a permitted use in an "urban" area
12 subject to the following special considerations, set forth in
13 KCC 26.16.160.

14 A. Utility and transmission facilities shall:

- 15 1. Avoid disturbance of unique and fragile areas;
16 2. Avoid disturbance of wildlife spawning,
nesting and rearing areas.

17 B. Utility distribution and transmission facilities
18 shall be designed so as to:

- 19 1. Minimize visual impact;
20 2. Harmonize with or enhance the surroundings;
21 3. Not create a need for shoreline protection;
22 4. Utilize to the greatest extent possible
natural screening.

23 C. The construction and maintenance of utility
24 facilities shall be done in such a way as to:

- 25 1. Maximize the preservation of natural beauty
26 and the conservation of resources;
27 2. Minimize scarring of the landscape;
3. Minimize siltation and erosion;
4. Protect trees, shrubs, grasses, natural
features and topsoil from drainage;

1 The peculiarity of the present situation is that the road and
2 utilities approval must be sought separately in order to secure access
3 for subdividing. Thus, what might otherwise be within an exemption is
4 here subject to shoreline permit requirements. But, these
5 circumstances do not bring any house which might be built within our
6 permit reviewing authority. Under the facts of this case, there is no
7 obligation, solely as a matter of shorelines law, to describe more in
8 the permit application than was described here.

9 Accordingly, the project at issue was adequately described for the
10 purposes of our review, see Hayes v. Yount, 87 Wn.2d 280, 552 P.2d
11 1038 (1976), and, of course, that review itself could take cognizance
12 only of those matters proven, more likely than not, to be the
13 consequences of the project actually proposed.

14 V

15 We conclude, in sum, that King County's permit should be
16 affirmed. In so doing we render no opinion as to whether Mr. Jeffress
17 is entitled to approval of his short plat application. That is a
18 separate proceeding before the County in which Mr. Elliott may wish to
19 participate. He may also wish to respond to the action the County
20 takes on a future building permit application for construction on the
21 site. If he does wish to be involved in these processes, he must make
22 certain that the County knows that he wants to be notified of what
23 they are doing.

24 We note that the County has enforcement responsibilities under the
25 Shoreline Act. The appellant here might profitably explore with the

1 prosecuting authorities their view regarding maintenance of the
2 historic setback line in this area.

3 VI

4 Any Finding of Fact which is deemed a Conclusion of Law is hereby
5 adopted as such.

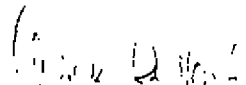
6 From these Conclusions of Law the Board enters this
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ORDER

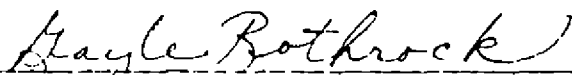
The action of King County in approving a shoreline substantial development permit under Application No. 016-35-SH is affirmed.

DONE this 23rd day of January, 1986.

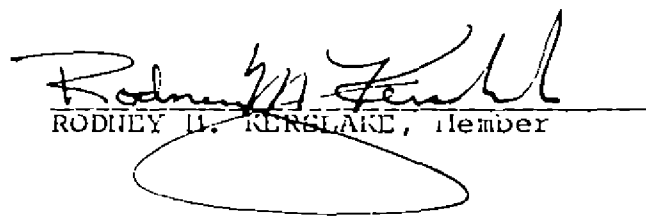
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